IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 565 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

M/S ORALE LABORATORY PVT LTD

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Appearance:

MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Petitioner

MR KR RAVAL for Respondent No. 1, 4

RULE SERVED for Respondent No. 3

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. This is a revision application u/s 397 read with section 401 of the Criminal Procedure Code at the instance of the State of Gujarat from the judgement and order of the learned Special Judge, Ahmedabad, in

Criminal Case No.38/97, wherein the respondents - accused were discharged.

2. The respondents - accused were charged with having committed violation of the relevant provisions of the Drugs [Price Control] Order 1987 [hereinafter referred to as `the Order of 1987, which Order is issued under the provisions of section 3 of the Essential Commodities Act, 1955. It is the case of the complainant that an investigation was carried out with regard to manufacturing and marketing activities of the accused firm, and that it was found that the accused had not obtained prior approval regarding the fixation of prices for such formulation "Melin", wherein two drugs were combined to form the formulation. Both these drugs are technically called bulk drugs as contemplated by the said Order of 1987. The first drug is Pyrimethamine I.P. and the second drug is Sulphamethoxy Pyridazine B.P. It is common ground that the first drug is specifically mentioned in the first schedule to the Order of 1987, and that the second drug was mentioned in the third schedule to the said Order. As a result thereof, the combination of these two drugs namely, the formulation "Melin" would be deemed to be a formulation or drug mentioned in the first schedule to the said Order, and therefore, the necessary approval for fixation of prices was necessary. Since admittedly the respondents - accused had not undertaken the necessary procedure, and had not obtained the fixation of prices from the Drug Control Administration, as required under the said Order of 1987, it was alleged that an offence had been committed under the said Order.

The respondents - accused were therefore prosecuted for the said offence, by filing of a complaint against them by the appropriate officer of the Food & Drugs Administration, Gujarat, which led to criminal case No.38/97.

4. During the pendency of the said case, the accused gave an application exh.25 wherein it was contended that the prosecution has been launched on the allegation that the accused have committed offences on account of non-compliance with the conditions imposed by the Order of 1987. However, in the year 1995, the said Order has been repealed, and replaced by the Drugs [Prices Control] Order, 1995, that under the latter Order of 1995, neither of the two drugs used by the accused in the manufacture of their formulation "Melin" is found in the first schedule and / or in any other schedule to the said Order, and that therefore, any prosecution initiated for

the violation of any provisions of the Repealed Order of 1987, is not maintainable.

5. After a detailed consideration of the repealed provision, and the provisions contained in the Order of 1995 [Item 27], the Special Court came to the conclusion that the prosecution cannot be continued in respect of offences alleged to have been committed under the Order of 1987. Learned Special Judge also considered the provisions of section 6 of the General Clauses Act and came to the same conclusion.

6. Having heard the learned counsel for the parties, I find that I am in complete agreement with the reasoning of the learned Special Judge, and with the specific finding that Item - 27 of the Drugs [Prices, Control] Order, 1995 would not save the prosecution launched in respect of an alleged violation of the Order of 1987.

7. However, apart from these reasons, there is an additional fact which appears to have escaped the attention of the prosecution, as also the Court. It is an admitted position that the offence alleged to have been committed by the respondents - accused, is an offence under the Order of 1987. It is an admitted position that Item - 27 of the Order of 1995 specifically repeals the earlier Order of 1987.

It is also clear that the said Item - 27 and particularly, sub-item [2], could perhaps save action taken under Order of 1987, only in case some action had been taken while the Order was in force. However, the important aspect on the facts of the present case is that the complaint itself is lodged on 13th November 1997, in respect of an offence committed under the Order of 1987, which had stood repealed by the Order of 1995. Obviously, it is nobody's case that the Order of 1995 is in any way violated. Thus, on the face of it, the complaint was not maintainable.

8. For the aforesaid reasons, I find that the order passed by the Special Court is just and proper and is required to be confirmed. There is no substance in the present revision and the same is therefore dismissed. Rule discharged.

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